

BASELINE UNDER THE FEDERAL POWER ACT

WHAT IS A BASELINE?

“A baseline is not an independent legal requirement, but rather, a practical requirement in environmental analysis often employed to identify the environmental consequences of a proposed agency action.”

American Rivers v. FERC, 201 F.3d 1186, 1195, fn 15 (9th Cir. 1990)

It is a comparison standard by which the lead agency determines whether any environmental impact is significant. CEQA Guidelines Section 15125(a).

BASELINE FOR NEPA PURPOSES

FERC’s use of the existing project as the environmental baseline, as operated under the current terms and conditions of the existing FERC license, was upheld by the Ninth Circuit Court of Appeals as an appropriate baseline for NEPA and Federal Power Act purposes, American Rivers, 201 F.3d at 1199.

However, this baseline definition raises the issue of distinguishing between construction-type impacts and ongoing impacts.

BASELINE FOR CEQA PURPOSES

The physical environmental conditions in the vicinity of the project, as they exist as the time notice of preparation is published (or at the time environmental analysis is commenced) will *normally* be the baseline by which the lead agency determines whether an impact is significant. *CEQA Guidelines Section 15125(a)*.

Compare the baseline concept with the “no project” alternative guidance. In preparing an EIR, a lead agency must analyze the “no project” alternative, which is not the baseline unless it is identical to the existing conditions. *CEQA Guidelines Section 15126.6(e)*.

BASELINE FOR CUMULATIVE IMPACTS (NEPA AND CEQA)

FERC analyzes “cumulative impacts” that may result from proposed hydropower action, defined as “those which result ‘from the incremental impact of the action, when added to other past, present, and reasonably foreseeable future action;’ 40 C.F.R. Section 1508.25(c).”

Under the Federal Power Act, the purpose of the cumulative impacts analysis is to identify potential enhancement measures for fish and wildlife resources and reduce

negative impacts attributable to a project since construction. *American Rivers*, 201 F.3d at 1198.

Geographic scope of analysis for cumulative impacts: Based on the distance the project's impacts extend from the project facilities. FERC, Preparing Environmental Assessments (March 2001). For hydroelectric projects, the geographic scope is typically the riverbasin or mainstem river for anadromous fish impacts.

Temporal scope: Past present and foreseeable future. Remember, new licenses are for thirty to fifty years.

BASELINE FOR ENDANGERED SPECIES ACT PURPOSES

Under the Endangered Species Act regulations, the environmental baseline is defined as:

Past and present impacts of all federal, State and private actions and human activities in the action area.

The anticipated impacts of all proposed federal projects in the action area that have completed ESA consultation

The impacts of State or private actions which are contemporaneous with the proposed federal action. 50 C.F.R. Section 402.02.